

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHEN WEI REN,	:	
Petitioner,	:	
vs.	:	C.A. No. 04-300E
	:	(McLaughlin, J.)
JAMES SHERMAN, Warden	:	(Baxter, M.J.)
FCI McKean,	:	
Respondent.	:	

PETITIONER'S OBJECTIONS TO THE REPORT AND
RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE

NOW COMES, the Petitioner, Chen Wei Ren, and appearing pro se, hereby files this his Objections to the Report and Recommendation of the U.S. Magistrate Judge ("Report"), as follows:

Discussion

The Report found that the Respondent credited Petitioner's federal sentence to the date he would have been released from state custody, which was May 14, 2000, and that the Bureau of Prisons gave a nunc pro tunc designation for that date. (see Report).

The Report misses the issue at bar. Petitioner has no problem with the Bureau of Prisons crediting Petitioner's time from the date he would have originally released from state custody, had he not been in federal pretrial custody on a writ of habeas corpus. The issue, however, is the date. Attached hereto as Exhibit A, is a document from the New York Department of Corrections documenting that his release date would have been November 13, 1997, had he not been in federal custody. The May 14, 2000 date is the date which was the maximum release. Had federal authorities not kept Petitioner in such a lengthy pretrial detention, Petitioner would have been released from state custody long before May 14, 2000. Therefore, the writ should be granted, and the Respondent ordered to give Petitioner credit from November 13, 1997 to May 31, 2000, the date of federal sentencing.

The Third Circuit's holding in Rios v. Wiley, 201 F.3d 257 (3rd Cir. 2000) does not dictate a different result. Rios is completely distinguishable from the instant case. Unlike the Rios petitioner, Petitioner Chen was in federal pretrial custody, on a writ of habeas corpus ad prosequendum, for over three years, and because of this lengthy detention, Petitioner was denied the opportunity for release at his earliest date of November 13, 1997. Because of this, Petitioner's Due Process Rights have been violated, and Chen's nunc pro tunc designation should have been to November 17, 1997, pursuant to the Third Circuit's holding in Barden v. Keohane, 921 F.2d 476, 479 (3d Cir. 1990).

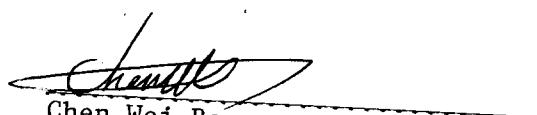
Conclusion

Based on the above, the Report should be rejected, and Chen's petition should be granted in its entirety.

WHEREFORE, facts and premises considered, Petitioner prays that this Court grant this motion as moved:

Dated: July 1st, 2005

Respectfully Submitted:



Chen Wei Ren
Reg. No. 38688-054
FCI McKean
P.O. Box 8000
Bradford PA. 16701-0980

State of New York
Department of Correctional Services
Gouverneur Correctional Facility
INMATE RECORDS OFFICE
P.O. Box 370
Gouverneur, New York 13642-0370
(315) 287-7351

Philip Coombe, Jr.
Acting Commissioner

John R. O'Keefe
Superintendent

U.S. Attorney's Office, SONY
One St. Andrews Plaza
New York, NY 10007

Htn: Joe Doherty

March 13, 1996

RE: Chen, Wilson aka Ya Pun Jai
DIN: 95R7734
NYSID: 7579650Q

Dear Sir or Madam:

The warrant listed below has been received from your office and has been lodged as a detainer against the aforementioned inmate.

Warrant #:

unknown

Docket #:

S4 95 Cr. 893

Charge(s):

Kidnapping

Firearms

Court:

U.S. District Court - Southern

Issue Date:

2/21/96

If this inmate needs to appear in court on these charges, an original Order to Produce should be sent to us at least two weeks prior to the appearance date. We require this much notice so that transportation may be arranged.

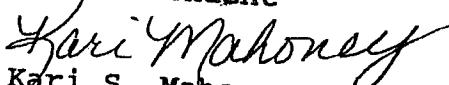
Detainer
Page 2

Your agency will be notified prior to his release. The inmate's earliest possible release date is 11/13/97.

If you require any further information, please call us at (315) 287-7351, ext. 232.

Very truly yours,

John R. O'Keefe
Superintendent


Kari S. Mahoney, Clerk II
Inmate Records Office

cc: Guidance
Parole
Legal File
Inmate

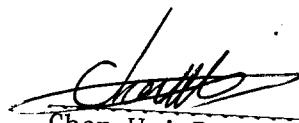
CERTIFICATE OF FILING AND SERVICE

I do hereby certify that on this the 1st day of July, 2005, I placed in the U.S. Mail, first-class postage prepaid, the original and one copy of PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE, to the following, for filing in this Court:

Office of the Clerk
United States District Court
Western District of Pennsylvania
P.O. Box 1820
Erie PA 16507

I do further certify that on this the 1st day of July, 2005, that I mailed a true and correct copy of this pleading to counsel for the Respondent, via first-class, postage prepaid, U.S. Mail, for delivery to:

Ms. Christy C. Wiegand, Esq.
Assistant U.S. Attorney
U.S. Courthouse and Post Office
700 Grant Street, Suite 400
Pittsburgh PA. 15219



Chen Wei Ren